

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE: NATIONAL PRESCRIPTION OPIATE LITIGATION : MDL No. 2804
: Case No. 1:17-md-2804
: Cleveland, Ohio
APPLIES TO ALL CASES :
: Thursday, May 10, 2018

TRANSCRIPT OF STATUS CONFERENCE

HELD BEFORE THE HONORABLE DAN AARON POLSTER

UNITED STATES DISTRICT JUDGE

and

THE HONORABLE DAVID A. RUIZ

UNITED STATES MAGISTRATE JUDGE

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United States District Court
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25 Proceedings recorded by mechanical stenography; transcript produced by computer-aided transcription.

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24 Catherine A. Yanni
25 David Rosenblum Cohen
Francis E. McGovern, II

09:09:02 1 (In Open Court.)

09:09:02 2 THE COURT: Good morning everyone. Please be
09:09:04 3 seated. I hope we have enough seats. If not, I apologize
09:09:07 4 to those in the back. This will not be a real long session,
09:09:14 5 but I did want to have a public session in open court since
09:09:19 6 we haven't had one for a while. And there are some people
09:09:24 7 on the phone and hope that you're able to hear.

09:09:31 8 So Judge Ruiz and I want to thank everyone for all the
09:09:34 9 hard work that all of you have been doing over the past
09:09:40 10 several months.

09:09:44 11 And I think we're going to start off by having a
09:09:46 12 report from our special masters to summarize some of the
09:09:50 13 work that's been doing.

09:09:53 14 Before we start, I want to introduce Alex Haas, who I
09:09:58 15 think is -- yes, good morning, Alex.

09:10:00 16 Alex is chief of staff and special counsel to the
09:10:02 17 Assistant Attorney General Civil Division.

09:10:04 18 Did I get it accurately?

09:10:06 19 MR. HAAS: That's correct.

09:10:06 20 THE COURT: Okay. Thank you.

09:10:08 21 And the Attorney General and the Department of Justice
09:10:14 22 has offered their services as a friend of the Court which I
09:10:16 23 have graciously accepted. I certainly need a lot of help.
09:10:19 24 And so I met with Alex and his colleagues last week at DOJ
09:10:25 25 along with representatives of several federal agencies. We

09:10:28 1 had a good discussion. So Alex is here today. So thanks to
09:10:32 2 Alex and the Attorney General.

09:10:33 3 So I guess we'll start off with -- Francis McGovern
09:10:42 4 will start.

09:10:43 5 Francis, make sure you're speaking into a microphone.
09:10:45 6 Thank you.

09:10:52 7 MR. McGOVERN: Thank you, Your Honor, Judge
09:10:53 8 Ruiz.

09:10:55 9 It's always a welcome sight to see so many folks who
09:10:59 10 want to participate in the resolution of the opioid crisis.

09:11:05 11 The report that I have today, Your Honor, as special
09:11:08 12 master concerns the discussions and negotiations that all of
09:11:14 13 the parties have had since our last meeting.

09:11:18 14 You may remember, Your Honor, that we had three groups
09:11:21 15 of plaintiffs, the plaintiffs' executive committee, the
09:11:27 16 litigating states and tribes, and the multistate group. We
09:11:34 17 had two groups of defendants, the manufacturers and the
09:11:36 18 distributors. And our discussions involved prospective
09:11:42 19 injunctive relief. And there were a variety of documents
09:11:46 20 that were provided for discussions among all of the parties
09:11:51 21 involving the prospective injunctive relief.

09:11:55 22 We had meetings roughly every two weeks, and we have
09:12:00 23 seen a substantial amount of progress in understanding the
09:12:08 24 issues, understanding the potential methods of resolving any
09:12:12 25 disputes that may exist concerning those issues, explored a

09:12:18 1 variety of compromises, and have had what I would consider
09:12:25 2 to be, in my experience, very fruitful, very open, very
09:12:32 3 cooperative discussions.

09:12:33 4 I'm pleased to report that now we're in a slightly
09:12:38 5 different situation. We have one group consisting of
09:12:45 6 representatives of the plaintiffs' executive committee, of
09:12:49 7 the litigating attorneys general, of the multistate, of the
09:12:54 8 tribes, and the U.S. And we are making sure that attendance
09:13:00 9 at those meetings is for everyone who would like to attend.
09:13:04 10 But we do have representatives of those plaintiffs' groups
09:13:11 11 working together with a consistent approach dealing with
09:13:15 12 prospective injunctive relief in our discussions.

09:13:20 13 With the defendants, we now have three groups. We
09:13:22 14 have the manufacturer group, we have the distributor group,
09:13:26 15 and we have the pharmacy group.

09:13:30 16 We are discussing, as I mentioned, prospective
09:13:34 17 injunctive relief, and we're also discussing various
09:13:39 18 procedures, structural mechanisms by which we could achieve
09:13:44 19 a resolution of implementing those procedural methods for
09:13:51 20 addressing some of the problems facing the nation in the
09:13:57 21 opioid crisis.

09:13:59 22 We have negotiation meetings scheduled for June --
09:14:07 23 continuing in May, for June, July, and August. We have a
09:14:13 24 session scheduled in July to focus on the opioid crisis in a
09:14:19 25 nonlitigation context where we will have a presentation

09:14:24 1 concerning the various business models that exist in our
09:14:30 2 healthcare system in the United States and nonlitigation
09:14:35 3 issues that can be addressed in a cooperative way beyond
09:14:39 4 just litigation to address the opioid crisis.

09:14:45 5 And so we want the Court to know that the parties are
09:14:49 6 in a very cooperative way addressing all of the issues that
09:14:53 7 we have in the litigation, and we will also be focusing on
09:14:58 8 nonlitigation solutions to problems that we may be able to
09:15:03 9 facilitate here in the multidistrict litigation in
09:15:08 10 accordance with your desire that we look at this problem
09:15:11 11 holistically rather than just a litigation problem.

09:15:16 12 Thank you, Your Honor.

09:15:17 13 THE COURT: Thank you, Mr. McGovern.

09:15:21 14 Special Master Cohen.

09:15:27 15 MR. COHEN: Thank you, Judge.

09:15:34 16 Special Master McGovern of course went first to
09:15:37 17 discuss negotiations to resolve this dispute because that's
09:15:42 18 the more important goal. I'm here to chat just very briefly
09:15:45 19 and to give the Court and everyone in the room and on the
09:15:49 20 phone a quick overview of what we're calling the litigation
09:15:53 21 track.

09:15:54 22 We have a settlement track which we're pursuing with
09:15:56 23 vigor. We have a litigation track that I should make clear
09:16:00 24 your special masters believe is in aid of settlement and not
09:16:06 25 instead of settlement. The purpose and the point of

09:16:09 1 litigating the legal issues that the parties have identified
09:16:13 2 is to make it easier to come to a resolution, and we believe
09:16:18 3 that that's really the point of it and that that will
09:16:20 4 happen.

09:16:24 5 As the Court knows, the case management order, the
09:16:27 6 first case management order went on less than one month ago,
09:16:30 7 on April 11th. And the case management order created a
09:16:36 8 litigation track for sovereigns, which is both states and
09:16:42 9 Indian tribes, Native American Indian tribes, local
09:16:47 10 governmental entities, being counties and cities, hospitals,
09:16:50 11 and third-party payors.

09:16:53 12 Since then, there are other groups or entities that
09:16:57 13 have sought to also join the litigation, and those are
09:17:00 14 litigation issues the Court is going to have to address.
09:17:03 15 For example, there are class actions that have been filed,
09:17:10 16 purported class actions representing babies who suffer from
09:17:12 17 neonatal abstinence syndrome. That is a different group
09:17:18 18 that the Court has not yet worked with.

09:17:22 19 There are class actions purportedly representing
09:17:27 20 everyone who has ever paid private insurance. And again,
09:17:32 21 that's something that the Court is going to have to get its
09:17:34 22 hands around.

09:17:35 23 This is obviously one of the most, if not the most
09:17:39 24 complex pieces of litigation that the federal system has
09:17:43 25 seen. That's a consistent statement made by every attorney

09:17:45 1 in this room. And so it's unsurprising given this level of
09:17:49 2 complexity that the case management order didn't touch on
09:17:52 3 every topic that it needs to and that we're going to have to
09:17:57 4 tweak things that have already been addressed. I expect
09:18:01 5 those issues to come up today perhaps shortly as the Court
09:18:06 6 asks for comments from the parties and also in the private
09:18:10 7 discussions the Court is going to have with the parties
09:18:13 8 later today.

09:18:14 9 One of those, for example, is the ARCOS data. The
09:18:18 10 Court has put on two different orders directing the
09:18:21 11 Government to release ARCOS data. What that has had the
09:18:25 12 effect of doing, Judge, is that of course other plaintiffs'
09:18:28 13 attorneys around the country would like to see that to
09:18:30 14 determine the extent to which they need to amend their
09:18:34 15 complaints, to drop or add defendants.

09:18:38 16 And what that in turn has created is a lot of
09:18:42 17 attention and, frankly, distraction on the PEC, which is
09:18:46 18 still trying to get its hands around the data, understand
09:18:48 19 the data. So that's an issue that I think we're going to
09:18:51 20 have to go back and add some additional directions for the
09:18:56 21 parties. And I'm sure the parties will raise that.

09:18:59 22 The point is, Judge, though, that we have a litigation
09:19:02 23 track. It's proceeding. It's not linear. Like the
09:19:09 24 negotiations, it will be two steps forward and one step
09:19:13 25 back, but it is moving forward. Everything seems to be

09:19:15 1 going as it should. Disputes will arise, and the special
09:19:19 2 masters and the Court I'm sure will address those as we go
09:19:23 3 forward.

09:19:24 4 And I believe that's my report on the litigation
09:19:27 5 track. Thank you, Judge.

09:19:28 6 THE COURT: Thank you, Special Master Cohen.

09:19:30 7 Special Master Yanni, is there anything you'd like to
09:19:34 8 add? Don't want to leave you out.

09:19:36 9 We have three exceptional special masters. Each of
09:19:39 10 them have unique skills and talents.

09:19:44 11 MS. YANNI: No, Your Honor, I'm good. Thank
09:19:47 12 you.

09:19:47 13 THE COURT: Okay. Thank you.

09:19:47 14 All right. I just want to emphasize one of the things
09:19:50 15 that Special Master Cohen said. We of course have a
09:19:55 16 litigating track. It's proceeding. I've set a trial for I
09:19:59 17 believe March 18 of 2019 here in Cleveland. But I
09:20:06 18 absolutely see it as an aid in settlement discussions. It's
09:20:10 19 not a substitute or replacement. It's necessary to do it
09:20:16 20 and we're doing it, but it's not a substitute or replacement
09:20:23 21 in any way.

09:20:23 22 And I still am resolved to be the catalyst to do -- to
09:20:32 23 take some steps this year to turn the trajectory of this
09:20:36 24 epidemic down rather than up, up, up. And I know everyone's
09:20:41 25 been -- shares that objective and is working hard on it.

09:20:43 1 I of course will be meeting separately with the
09:20:52 2 different groups today, and we'll be starting that as soon
09:20:54 3 as we finish the public session.

09:20:58 4 With some trepidation, I'm going to ask if there's
09:21:00 5 anyone who feels there's something that needs to -- or
09:21:06 6 should appropriately be said while we're all together in
09:21:08 7 open court. I'm not -- so I'm -- if there's -- remember,
09:21:17 8 you're going to have an opportunity to say a lot of things
09:21:21 9 to me and Judge Ruiz privately, starting as soon as we
09:21:26 10 break. But there may be something that someone feels should
09:21:29 11 be said while we're all here.

09:21:31 12 Yes, Mr. Rice?

09:21:33 13 MR. RICE: Your Honor, Joe Rice on behalf of
09:21:35 14 the plaintiffs' executive committee. I'd like to take the
09:21:37 15 opportunity to follow up on a couple comments that Special
09:21:41 16 Master Cohen brought to the Court's attention.

09:21:42 17 The ARCOS database, as Your Honor knows, has proven to
09:21:46 18 be very helpful, and we believe it will fulfill some of the
09:21:49 19 goals the Court sees to help law enforcement and other
09:21:52 20 agencies. But our group is working 24/7, and we're getting
09:21:55 21 a lot of pressure from people to start giving things out.
09:21:58 22 And we need some time to be sure that what we're producing
09:22:02 23 and how we're getting it together is going to be a useful
09:22:05 24 product. So it would be helpful if we had some indication
09:22:08 25 from the Court that we could have 30, 45 days to report back

09:22:12 1 to the Court and not have people bombard us for wanting the
09:22:17 2 data until our team can get it into workable shape.

09:22:21 3 THE COURT: That is a fair request, Mr. Rice.
09:22:23 4 The CMO made it clear, I thought it was clear, that for
09:22:31 5 those cases that aren't set now for trial, plaintiffs are
09:22:38 6 not under any imminent deadline to amend their complaints so
09:22:43 7 that there's no need for someone to say, look, if I don't
09:22:47 8 get this ARCOS data in the next 30 days and either add
09:22:52 9 defendants or subtract defendants, I'll be barred from doing
09:22:55 10 that. In fact, it's the opposite. So I thought that was
09:22:58 11 clear.

09:22:59 12 And so I'm going to -- I'm going to request that
09:23:05 13 lawyers on the nonlitigating cases, the cases that haven't
09:23:11 14 been set for trial -- and, quite frankly, the only ones set
09:23:14 15 for trial are the three that I indicated: City of
09:23:18 16 Cleveland, Cuyahoga County, Summit County -- that those
09:23:22 17 lawyers hold off. You'll have plenty of time to request
09:23:26 18 that data if and when your case is set for trial and that to
09:23:34 19 hold off contacting the PEC for the data.

09:23:36 20 And, Mr. Rice, if you get the calls, just -- I mean,
09:23:40 21 you note them down, but you don't need to respond now.

09:23:43 22 MR. RICE: And that brings the second point
09:23:45 23 up, Your Honor. You are correct that there is a lot of
09:23:47 24 confusion from the CMO about the need for filing amended
09:23:51 25 complaints, and we appreciate Your Honor's clarification

09:23:53 1 this morning on that. But it also raises a second issue,
09:23:56 2 and that is as to new defendants that are added, the parties
09:24:01 3 are concerned about whether the Court will recognize the
09:24:04 4 relation back since we're sort of stayed and we don't have
09:24:06 5 the knowledge yet to add those parties. So there's a
09:24:09 6 concern about the statute of limitations issues and the
09:24:12 7 concept of relation back to the original filings, as to the
09:24:18 8 new parties.

09:24:19 9 THE COURT: Well, that's a little more
09:24:20 10 complicated. I'm not sure I can answer that one on the fly.
09:24:29 11 So it is important for those cases that are being litigated,
09:24:31 12 and those amended complaints have been filed. Some new
09:24:33 13 defendants are added. Some have been subtracted. The whole
09:24:38 14 point of the ARCOS data was that now it's evidence-based,
09:24:41 15 fact-based, and we have the parties in who need to be in.
09:24:46 16 If parties don't need to be, so be it.

09:24:48 17 Mr. Rice, I appreciate the formality and the courtesy
09:24:53 18 of standing. The problem is that with people on the phone,
09:24:58 19 if you're standing, they can't hear and the court reporter
09:25:01 20 can't. So I guess anyone can be either at the lectern or
09:25:06 21 seated and that's fine.

09:25:09 22 So I think you'll need to try and work out that
09:25:11 23 relation back issue. And if the Court needs to get
09:25:16 24 involved, I will.

09:25:17 25 MR. RICE: Your Honor, there's a third issue

09:25:19 1 that we need some guidance on. And I think this was maybe
09:25:21 2 an oversight in the CMO. We have filed -- we have not filed
09:25:26 3 in Court, we have served the many complaints for the track
09:25:31 4 cases, and today we've -- since the Chicago case, pursuant
09:25:34 5 to the special master's instructions, to add the Chicago
09:25:38 6 distributor case.

09:25:39 7 And we sent the redacted versions to the defendants
09:25:43 8 which basically redacted the ARCOS data pursuant to the
09:25:47 9 ARCOS protective order. However, we have not been able to
09:25:50 10 file those as public documents, and we're getting a lot of
09:25:53 11 questions about that as well. And we just don't have a
09:25:55 12 deadline in the CMO to get that done.

09:25:59 13 THE COURT: All right. That's a good point.
09:26:01 14 In fact, I was driving in today, and there was a story on
09:26:05 15 NPR. And it said that the amended complaint's been filed
09:26:11 16 under seal and so no one knows what it is.

09:26:14 17 All right. We need to accelerate that.

09:26:20 18 MR. LYNCH: Your Honor, if I may?

09:26:20 19 THE COURT: Yes.

09:26:21 20 MR. LYNCH: Mark Lynch for McKesson. For the
09:26:24 21 McKesson, Cardinal, and AmerisourceBergen, we notified
09:26:27 22 Mr. Rice yesterday that we have no objections -- we have no
09:26:30 23 redactions that we're going to seek in the amended
09:26:32 24 complaints.

09:26:35 25 MR. RICE: Thank you, Counsel.

09:26:35 1 THE COURT: All right. Fine.

09:26:41 2 All right. Well, what about the other groups? When
09:26:44 3 are they going to get -- I'm going to -- if you know now, if
09:26:47 4 you have any -- have no objections, you can say it. If
09:26:49 5 you're not in a position...

09:27:07 6 All right. I'll just make it by noon a week from
09:27:10 7 today, which is the 17th, for all other defendants. And I'm
09:27:25 8 going to say by noon the following Wednesday, which will be
09:27:33 9 the 23rd, that's all to be resolved, okay? And if it's not,
09:27:38 10 submit it to the Court, I'll decide it fast. Okay?

09:27:44 11 So noon the 14th. Any objections by any of the other
09:27:50 12 defendant groups - that would be the manufacturers and
09:27:55 13 pharmacies - I'm giving another six days, noon the 23rd, May
09:28:00 14 23rd, to get that all resolved. And if it's not resolved
09:28:04 15 then, submit a joint report to the Court immediately, and
09:28:09 16 I'll decide it. I'll just call it, and that will be it.

09:28:14 17 MR. RICE: Your Honor, I think that's the only
09:28:16 18 housekeeping matters the plaintiffs had. We've got some
09:28:18 19 matters to take up with the special masters, but I think it
09:28:21 20 belongs there first.

09:28:45 21 (Off-the-record discussion.)

09:28:45 22 THE COURT: So it's noon, next Thursday, the
09:28:47 23 17th, for any objections. And then have it all worked out
09:28:50 24 by noon the following Wednesday, the 23rd. If there are any
09:28:56 25 issues, submit them immediately to the Court, and I'll

09:28:58 1 decide it.

09:28:58 2 MR. CHEFFO: Your Honor?

09:28:58 3 THE COURT: Yes, Mr. Cheffo.

09:29:12 4 MR. CHEFFO: Let me just take a minute to both
09:29:16 5 thank the Court and your staff and the special masters and
09:29:19 6 the Government to the extent that they're participating. We
09:29:21 7 really do appreciate that.

09:29:22 8 I would just say that I think I've been glass half
09:29:25 9 full in this process. We have a lot of work. There are
09:29:28 10 many complicated issues. But I think that, you know, we've
09:29:30 11 seen some cooperation, a lot of cooperation and compromise
09:29:33 12 and professionalism, so hopefully that will continue. And I
09:29:36 13 think we're all moving in the right direction.

09:29:37 14 Just to speak one minute, I think Your Honor's
09:29:39 15 addressed this already, but just so we're clear on this
09:29:42 16 relation back, I think we would urge the Court to come out
09:29:44 17 where I think you did. For instance, obviously we can't
09:29:46 18 speak for folks who may not be at the table, so that would
09:29:49 19 be the first issue. And we think that amendment should be
09:29:53 20 governed by the normal rules of federal civil procedure.

09:29:56 21 THE COURT: I said I'm not going to be able to
09:29:58 22 deal with that on the fly. If you can't work this out,
09:30:00 23 you'll have to submit it first to the special masters and,
09:30:04 24 if there's still a problem, to Judge Ruiz and me, and
09:30:07 25 I'll -- we'll make the decision.

09:30:09 1 MR. CHEFFO: Great. And thank you.

09:30:10 2 And the last just quick housekeeping, I think it

09:30:12 3 doesn't necessarily relate to the ARCos as I understood it

09:30:15 4 and the amendment which none of the folks here have

09:30:18 5 objections. To the extent that we do have other -- if there

09:30:22 6 are any other redaction issues, what I would ask is the

09:30:25 7 plaintiffs to help us and the Court -- often, there may be

09:30:31 8 issues of redaction and it's hard to actually find the

09:30:33 9 documents or the statements.

09:30:34 10 So to the extent that we're going forward and if we're

09:30:37 11 talking about anything other than the ARCos data, that that

09:30:39 12 information be supplied to us so we could actually quickly

09:30:41 13 find it and then get back to the plaintiffs. We've asked

09:30:44 14 them for that, and I think that would really help us going

09:30:47 15 forward, Your Honor.

09:30:49 16 THE COURT: All right. I'm not quite sure I

09:30:51 17 understand what the disagreement is, but --

09:30:55 18 MR. CHEFFO: I don't think there's a

09:30:57 19 disagreement.

09:30:58 20 THE COURT: You've been working cooperatively.

09:30:59 21 Just continue to do that.

09:31:00 22 MR. CHEFFO: Thank you.

09:31:03 23 THE COURT: Okay. So you're still --

09:31:04 24 something you wanted? Yes, sir.

09:31:06 25 MR. DOMINA: May it please the Court, I'm Dave

09:31:09 1 Domina from Nebraska. I'm not here on a procedural matter.
09:31:12 2 I want to spend just a few seconds speaking to the
09:31:15 3 circumstances of Native Americans and particularly the
09:31:19 4 Plains tribes.

09:31:22 5 Your Honor, those people have been marginalized in
09:31:25 6 every significant thing that has happened in the history of
09:31:28 7 the United States, and they want to not be marginalized in
09:31:31 8 this proceeding. Native Americans are 1.7 percent of the
09:31:35 9 population of the United States. They have many multiples
09:31:40 10 of that number of the totality of this devastation among
09:31:43 11 their people.

09:31:45 12 I am here simply to let the Court know how important
09:31:48 13 it is to them that they have their own track, have their own
09:31:54 14 opportunity to elevate their unique concerns. And they have
09:31:58 15 unique concerns. They relate not only to their own medical
09:32:01 16 circumstances, their historical circumstances, but also to
09:32:05 17 the means of distribution of this pernicious medication
09:32:09 18 among their people.

09:32:10 19 So as this goes forward, I want it to be remembered
09:32:14 20 that today they spoke out against being marginalized and in
09:32:19 21 favor of having a distinct track.

09:32:22 22 Thank you very much.

09:32:23 23 THE COURT: All right. Thank you, Mr. Domina.

09:32:26 24 I know I've said privately and I'll say publicly, the
09:32:32 25 tribes are an important part of this litigation. They have

09:32:36 1 been, I think, disproportionately affected by the opioid
09:32:42 2 epidemic. And I've made very clear that if there is a
09:32:49 3 resolution, there won't be one without them. So it's not --
09:32:53 4 this Court is not going to marginalize them. In fact, it's
09:32:56 5 the opposite. And whether they're a separate track or
09:32:59 6 they're an integral part of the plaintiffs' track -- I know
09:33:04 7 they've been -- I expect to be talking to lawyers for the
09:33:09 8 tribes when I have my first meeting with the plaintiffs.

09:33:12 9 So some of them are represented by PEC lawyers, some
09:33:17 10 are self-represented, as they may be because they're
09:33:23 11 sovereign nations. So thank you.

09:33:27 12 MR. DOMINA: Thank you.

09:33:30 13 MR. SKIKOS: Your Honor, Steve Skikos on
09:33:33 14 behalf of plaintiffs' liaison.

09:33:35 15 I just want to document for the Court and for all
09:33:37 16 parties here the lead counsel in the PEC has been and will
09:33:42 17 continue to vigorously represent the interests of the
09:33:44 18 tribes. We actually had a call with Mr. Domina yesterday.
09:33:49 19 We have a fully cooperative group engaged. And we will be
09:33:54 20 presenting to Your Honor as Francis McGovern told me at the
09:33:59 21 break.

09:33:59 22 THE COURT: Okay. Thank you, Mr. Skikos.

09:34:08 23 Is there anyone else?

09:34:25 24 MR. RICE: Your Honor, I do have one other
09:34:27 25 matter.

09:34:27 1 As Your Honor has scheduled our next conference, we
09:34:30 2 expect at that time that the MDL panel may have
09:34:34 3 transferred -- conditionally transferred one or more state
09:34:37 4 AG cases that the states will be seeking, pursuant to the CM
09:34:41 5 order, for immediate remand hearings. And so for scheduling
09:34:45 6 purposes, I just wanted to try to get that on Your Honor's
09:34:50 7 calendar.

09:34:51 8 THE COURT: All right. We'll have to figure
09:34:53 9 that out.

09:34:58 10 MR. CHEFFO: I'm not sure that I understand
09:35:00 11 exactly what Mr. Rice is talking about in terms of immediate
09:35:02 12 remand hearings.

09:35:05 13 THE COURT: Well, first of all, we can't have
09:35:06 14 a hearing unless and until someone files a motion. All
09:35:08 15 right?

09:35:10 16 I think you're right, Mr. Rice. I would anticipate if
09:35:17 17 a case filed by a state attorney general is removed to
09:35:22 18 Federal Court and transferred here, I would anticipate that
09:35:26 19 state will file a motion to remand. There may be an
09:35:29 20 opposition, and if we need a hearing, we'll have one. But
09:35:33 21 we'll certainly address those. But I'm not going to -- I
09:35:37 22 think it would be inappropriate to just schedule a hearing
09:35:40 23 without any motion at all.

09:35:41 24 MR. RICE: No, sir, I wasn't asking for that.
09:35:43 25 I was just putting before the Court that when we do the

09:35:46 1 schedules -- and we have a very tight schedule during the
09:35:50 2 time -- that we may actually need some time at the next
09:35:53 3 hearing for actual motions.

09:35:54 4 THE COURT: Well, all right. But I -- I don't
09:35:57 5 have to wait to deal with a motion till we have a hearing or
09:36:02 6 a conference. I mean, I'll -- I know how to deal with
09:36:06 7 motions, and if --

09:36:08 8 MR. RICE: Okay. Thank you, Your Honor.

09:36:09 9 THE COURT: I may not need -- typically,
09:36:12 10 lawyers are pretty good at stating the law and the facts.
09:36:16 11 And the only time I generally require hearings is
09:36:19 12 evidentiary ones when there are facts in dispute or I'm
09:36:24 13 taking testimony. I really don't need too much exposition.
09:36:28 14 So we'll deal with those.

09:36:31 15 MR. RICE: Thank you, Your Honor.

09:36:33 16 THE COURT: Okay. Then we will adjourn this
09:36:38 17 public portion. And the first meeting on our schedule is
09:36:43 18 with the plaintiffs, so that would be PECs, any attorneys
09:36:50 19 general, tribes, and any of the other third-party payors,
09:36:57 20 hospitals. And we're going to do that -- that's probably
09:37:03 21 the largest group. We'll meet in the courtroom on 16.

09:37:08 22 (Off-the-record discussion.)

09:37:10 23 THE COURT: 16A. We'll go to 16A.

09:37:16 24 MR. COHEN: Judge, the United States will be
09:37:19 25 part of that as well?

09:37:20 1 THE COURT: Yes, Mr. Haas and his group can
09:37:23 2 come with that one.

09:37:24 3 Okay. Thank you.

09:37:27 4 (Proceedings adjourned at 9:37 a.m.)

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7 **C E R T I F I C A T E**

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9 I certify that the foregoing is a correct transcript
10 of the record of proceedings in the above-entitled matter
11 prepared from my stenotype notes.

12

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/s/ Lance A. Boardman

Lance A. Boardman, RDR, CRR

05/14/2018

DATE

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